

Fax

TO: Marlene Dortch

FROM: William J. Kirsch

COMPANY: Secretary, FCC

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SUBJECT: RIF 17-108 Comments Four Pages 1-3

DATE: Saturday, June 24, 2017

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

Restoring Internet Freedom
WC 17-108

COMMENTS OF WILLIAM J. KIRSCH
PART FOUR

The Wheeler Commission's *Open Internet* Order and the FCC Commission's *Restoring Internet Freedom* Notice of Proposed Rulemaking (NPRM) offer alternative views for the Internet.

PLATO

President Barack Obama's college professor provides us with one method to analyze the RIF proposal. See, e.g., Roger Boesche, *Theories Of Tyranny From Plato to Arendt*, The Pennsylvania State University (1996). In *The Republic* Plato discussed four stages of decline from an ideal city: (1) a timocracy based on a love of honor; (2) an oligarchy based on a love of wealth; (3) a democracy based on a love of license that has the appearance of freedom; and (4) a tyranny based on a state of limitless desiring. Boesche at 29.

From one perspective the first stage, i.e. timocracy, suggests Plato was describing the period from the Revolutionary to Civil War America, including particularly the Confederate States. The second stage, i.e. oligarchy, suggests Plato was describing the period from Reconstruction to the Great Depression. The third stage, i.e. democracy, suggests that Plato was describing the period from the New Deal to the end of the Cold War. Unfortunately, the Plato stages conclude with "tyranny" that includes familiar elements after the "greatest generation" ceded political power to the "baby boomers." We are not faring well under Plato's prophecy.

Plato concluded that a tyrant is, by definition, a person governed by desire and that a tyranny involves rulers and subjects abandoning virtue in favor of wealth. Boesche at 32-40. Perhaps Plato was referring to the same swamp as a 2016 Presidential candidate?

Those still puzzled why middle America rejected the Clinton-Obama-Clinton agenda should study Plato. It is because Trump supporters view the progressive agenda as tyranny. To middle class America the progressive agenda fulfills Plato's prophecy of a culture of "hedonism" based on tyrants dictating how to behave, to think, and even to feel. Boesche at 31.

SOCRATES

For those Trump supporters still puzzled why many Americans continue to oppose President Trump one might look to Socrates and his argument that a man who is constantly self-seeking is incapable of friendship. Self-seeking strategy is a common theme of Boesche at 42. For some Making America Great Again (MAGA) is a strategy for the benefit of Christmas yet to be.

ARISTOTLE

Aristotle concluded that divide and conquer is a time-honored maxim. It is based on deception and that it naturally seems to have either no or few alternatives. Boesche at 74-76. For tyrants' sunshine in government and an open internet are not the best policies.

Our Founding Fathers and wise later leaders learned from Plato and adopted the more optimistic Aristotle assessment that the Bill of Rights, the Freedom of Information Act and the Administrative Procedure Act provide the average citizen with essential opportunities for the preservation of a government of the people, by the people and for the people. For liberty to survive, however, it must grow. The United States has built an open internet that makes citizens around the world "virtual" Americans. That is the power of freedom that illiberal governments fear and are reacting against.

If citizens become voluntary slaves and mere actors playing roles of transitory self-interest (Boesche at 4), then *Verizon v. FCC*, reminded us that in a *tragedy of the commons*, in which all pursue self-interest, even Britons could become slaves. That is where Prime Minister May may have already made a mistake with her new election internet program. The British do not have a written constitution or a Bill of Rights, but they do have a long history and a tradition, including the right to a fair trial in Hyde Park, of free speech. The British have a vibrant newspaper culture in Fleet Street.

The British people rejected the European Union's offer of making them slaves and voted for Brexit. Now President Trump is making it clear that the crisis point is on the German unwillingness to reform not on the British. The French and the British imposed a punitive peace on Germany after the First World War and it led to Hitler and the Second World War. Now after the United States implemented a magnanimous peace after the Second World War the Germans have returned to the Prussian dream of the domination of Europe and made clear that after the re-unification of Germany their ungrateful response is that the European Community of equals (at least among the Big Four - France, Germany, Italy and the United Kingdom) is not good enough. The Germans want to dominate the European Union with immigrants of their choosing, i.e. from the former Ottoman Empire aligned with the Kaiser. But the Germans underestimate the French and the Benelux countries and other European states. They will not let this happen.

The declining freedom internationally is a result of the illiberal governments takeover or

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history.

Aristotle explained that it is nearly impossible for a person to be good in an evil political order. Boesche at 55-56. Campaign rhetoric aside, a desire for the good life explains Lady Liberty and immigration to the United States and Western Europe. Tacitus affirmed Aristotle's view that anonymity, i.e. privacy, plays an important role in protecting liberty through personal safety. And Montesquieu agreed. See Boesche at 108. That does not mean, however, that we can ignore public safety needs in a Hobbesian world. See, e.g. Michel Oksenberg, "Getting Ahead and Along in Communist China," *Party Leadership and Revolutionary Power in China*, ed. John W. Lewis (London: Cambridge Univ. Press, 1970). We await further explanation from Chairman Pai and Commissioner O'Rielly regarding how they specifically propose to address privacy, public safety and defense. For it is not there now. And their proposed approach cannot proceed under any circumstance without it.

MACHIAVELLI

If a populace can be seduced into servitude by promises of diversions, pleasure, comfort and security, then a princely tyranny can cause extreme misery, infamy and degradation. Boesche at 104-109; N. Machiavelli, *Discourses on the First Ten Books of Titus Livius*, trans. Christian E. Detmold, *The Prince and the Discourses* (New York: Modern Library, 1950).

Chairman Pai and Commissioner O'Rielly can find some solace in Machiavelli's view that evil, including tyranny as the greatest evil, may come from good qualities and that a man who pursues goodness in everything must necessarily come to grief among so many who are not so good. Boesche at 119. But if they have any good reasons for re-classification hopefully they will begin to understand that reclassification rather than streamlining and forbearance will lead to the evil of unjust and unreasonable discrimination and unjust and unreasonable rates. Better an alternative minimum tax for billionaires than this approach.

True, waste, fraud and abuse in the FCC's current Title II administration of subsidy schemes may be considered "cruel incompetence" that is partly responsible for the digital divide of rural and poor America and the unjust and unreasonable rates imposed upon middle class America. Boesche at 109-119. We can and must do better. But that will take hard work that Chairman Pai and Commissioner O'Rielly have not yet offered as a solution. They should not rely on the solutions of political hacks and lobbyists, but instead listen to the American people and our technical experts.

DO NO HARM

The RIF NPRM is based on a misreading of regulatory history. Therefore, Chairman Pai and Commissioner O'Rielly can begin by retaking their class on the FCC. The success of the broadband wireless industry is based on previous hard work by the FCC in *Hush-A-Phone* and *Carterfone*. Part 68, for example, established the do no harm to the network standard. In

contrast, as millions have told Mr. Pai and Mr. O'Rielly, who apparently are not yet listening, the RIF proposal will do harm. Mobile handsets and the ecosystem of entrepreneurs supporting new applications provide the way forward for 5G not illiberal foreign governments dominating the ITU and poised to dominate ICANN.

Chairman Pai picked the wrong starting point for his analysis. The Clinton Administration was the recipient of the FCC's hard work with regard to domestic computer-to-computer communications in the *Computer II* and *Computer III* proceedings. While the divestiture of AT&T is referenced, AT&T had a monopoly in telephone service and was a minor player in the computer-to-computer communications market dominated by IBM mainframe computers. IBM won its antitrust case versus the government, but lost its computer-to-computer communications monopoly to Microsoft. The unregulated nature of Microsoft's desktop monopoly has now come back to haunt the United States as tens of millions of computers in China are not subject to the 47 U.S.C. 214 discontinuance applicable to traditional telephone service. Indeed, the People's Republic of China Great Firewall may be, at least in part, a reaction to Microsoft's decision not to support certain security upgrades. Therefore, one option for the FCC to begin dismantling the Great Firewall brick by brick or BRIC by BRIC might be to regulate Microsoft's provision of e-mail service integrated into its monopoly provision of desktop software. Instead, the FCC RIF proposal sets the stage for the entry into force of the new PRC cybersecurity law on June 1. The FCC can make a statement against this Great Firewall by publishing my Petition for Reconsideration of the Open Internet Order in the Federal Register tomorrow.

From an international perspective RIF completely ignores that fact that it was the Reagan FCC not the Clinton FCC that put the Internet on the path to freedom. International computer-to-computer communications only became a realistic possibility with the adoption of CCITT Recommendation D.1 for the liberalization of international private leased lines. AT&T and the record carriers, including MCI and Sprint, had a strong incentive to promote such international computer-to-computer communications after the adoption of CCITT/ITU-T Recommendation D.140 provided a consensus to lower international message telephone service accounting rates. The "buyer's regret" of the British imperial carrier, Cable & Wireless and others came almost a decade later after they saw that the Internet revolution could spark a marketplace revolution of their cartel grip on international telecommunications rather than increased profits. Their regulatory effort to turn back time was rejected by the Court of Appeals for the District of Columbia Circuit in *Cable and Wireless v. FCC*. Only at that time did the Clinton Administration step in and unlawfully usurp FCC authority to establish ICANN. The transition from analog to digital communications was propelled forward by the Reagan Administration. The dotcom boom and bust and the "sordid profits" of the Internet giants were propelled forward by private immorality undermining any sense of public duty. Boesche at p. 98. That was why some concluded that a dingo was guarding the chicken coop.

Now the chickens have come home to roost. The RIF proposal violates the regulatory principle of FCC do no harm.

The wireline broadband market, consisting of at least three traditional common carrier legacy services, voice, data and streaming audio-visual services, cannot be considered an information service according to the correct assessment by the late Justice Scalia that the primary non-common carrier element, cable television service, is not a legacy common carrier service. Cable television service never was an information service. And combining cable television service with three legacy common carrier services does not somehow make all four an information service. AT&T and COMSAT provided carrier's carrier provision of "streaming audio-visual services" that Netflix, Amazon and others are now making available on a retail basis to break the cable television cartel. This is part of what RIF undermines. Competition. Deception leads to tyranny. Boesche at 76. The American people will not permit it.

True, the wireless broadband market, despite significant cord-cutting due to past exorbitant wireline price increases, is still an oligopoly. Wireless broadband is still a complementary service rather than a substitute for the monopoly or duopoly wireline broadband market. The RIF proposal would simply encourage non-economic gaming of regulatory classifications that primarily benefit foreign-owned wireless broadband carriers. The RIF proposal would be weaker on telecom trade and the U.S. comparative advantage than the Obama Administration. The Trump Administration and FCC cannot continue to be weaker on telecom trade than Presidents Wilson, Harding, Coolidge, Hoover, Roosevelt, Truman, Eisenhower, Kennedy, Johnson, Nixon, Ford, Carter, Reagan and George H.W. Bush. This would be a path to the decline and fall of the United States not MAGA.

The path forward for restoring internet freedom is ensuring non-discriminatory access to an adequate nationwide and worldwide broadband network at just and reasonable rates. The FCC must begin by restoring a voluntary telecom standards process through a revocation of the 2012 Dubai ITRs and by the establishment of regulatory oversight of ICANN. The United States can also re-establish free trade momentum for telecommunications by bilateral agreements beginning with the United Kingdom, before or after Brexit, based on shared Magna Carta-based common law values and the rule of law. USTR must ensure application of the reciprocity, state-owned enterprise and foreign corrupt practices provisions of the Trade Act of 2015 and the Africa Growth and Opportunity Act. And the Department of State must vindicate my constitutional right to seek employment by placing my name on the ballot for Secretary-General at the 2018 Plenipotentiary Conference at Dubai. In the meantime, the Department of Justice and the Federal Trade Commission should not act like Nero and let America burn by the fraudulent, corrupt, substitution of combustible external insulation finishing systems for non-combustible brick.

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
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Restoring Internet Freedom
WC 17-108

COMMENTS OF WILLIAM J. KIRSCH
Part Three

MEMORIAL DAY 2018

Commissioner O'Rielly states that the Notice "asks a full range of questions on the proper legal classification of broadband Internet access service."

This statement is incorrect.

The Notice does NOT ask about public safety and defense.

Title 47-Telegraphs, Telephone and Radiotelegraphs,
Chapter 9-Interception of Digital and Other Communications
Sections 1001-1021 (2011)

47 U.S.C. 1004

A telecommunications carrier shall ensure that any interception of communications or access to call-identifying information can only be activated with a court order or other lawful authorization. Congress has made the FCC aware of the unlawful interception of communications associated with Signaling System 7. ICANN leadership has stated that the Internet was designed not for security, but for an end user *caveat emptor* approach. The FCC has the statutory authority to provide for an adequate network for nationwide and worldwide communications for public safety and defense but has failed to meet this legal responsibility. Now the Trump FCC proposes to be weaker on public safety and defense than the Clinton, Bush and Obama Administrations. The FCC should remember President John F. Kennedy's assertion that failure is an orphan and abandon this proposed disaster as soon as possible.

47 U.S.C. 1005

A telecommunications carrier shall consult with manufacturers of its telecom transmission and switching equipment in order to comply with U.S. law. The 2012 Dubai World Conference on International Telecommunications adopted an unlawful, illiberal majority rule approach to the adoption of international standards used by manufacturers of telecom

transmission and switching equipment. The 2012 Dubai International Telecommunication Regulations illiberal majority, protectionist, mercantilist, BRIC/OPEC-led mandatory standards approach replaced the traditional European-led voluntary standards approach. This threat to U.S. public safety and defense is not included in Mr. O'Rielly's "full range of questions."

47 U.S.C. 1001

The "full range of questions" do not include a discussion of the 47 U.S.C. 1001 (2) "call-identifying information" or "dialing and signaling information" that "identifies the origin, direction, destination, or termination of each communication" that will be available to foreign, state-owned, broadband access providers under Mr. Pai's and Mr. O'Rielly's proposal. The proposal also does not include a "full range of questions" concerning, for example, SoftBank Sprint, T-Mobile, Altice, Telcordia, ICANN and others' role in the provision of "electronic messaging services" under 47 U.S.C. 1001 (6)(iii) associated with 47 U.S.C. 1001 (6) (C) and telecommunications carriers internal management, control or operation of telecommunications networks. The Notice also does not ask the "full range of questions" associated with the small Team Telecom fig leaf for continuing over-sized unilateral trade concessions to foreign owned and SOEs after the explicit statutory direction of the Trade Act of 2015 to obtain reciprocal trade concessions, address foreign corrupt practices and eliminate SOEs related to 47 U.S.C. 1001 (8) (B)(i) and (ii). Team Trump weaker on telecom trade than Team Obama? Inquiring minds want to know.

XYZ AFFAIR OR THE QUASI-WAR

Mr. O'Rielly's full range of questions also do not appear to include any review of historical mistakes. The United States cancelled the 1778 Treaty of Alliance with France after the release of certain dispatches. Talleyrand's demand for a bribe turned out to be worse than a crime. It was a mistake.

SEMAPHORE AND THE NAPOLEONIC WARS

President Trump has expressed a preference for delivery by messenger, but by the end of the eighteenth century line of sight communications towers provided French capability to send a signal from Paris to Lille in five minutes and to Venice in six hours. See, e.g. *Napoleonic Guide*, l'Ecole Centrale de Lyon. Napoleon was able to end the thousand year democratic Venetian Republic by breaching the sea wall around Venice, but his million man Grand Army would be decimated by the Tsar. Excellent communications are necessary, but alone are not sufficient for victory.

THE EMS TELEGRAPH

Prince Otto von Bismarck, the Prime Minister of Prussia, took a telegram originally sent under instructions of King Wilhelm I by the Prussian Foreign Office, and made edits to give the

false impression of an insult. On July 19, 1870, viewing the Prussian insult as intolerable, France declared war. By May 1871 Prussia was not only the most powerful country in continental Europe, but had claimed Alsace and Lorraine and received an indemnity of five billion francs. See, e.g., *The Ems Telegraph: Bismarck and the Franco-Prussian War*, Age-of-the-Sage.org. Transmitting the Wisdom of the Ages.

THE ZIMMERMAN TELEGRAPH

In her masterpiece, *The Guns of August*, Barbara W. Tuchman, reminds us that General von Bernhardi, the first German to ride through the Arc de Triomphe when the Germans entered Paris in 1870, wrote *Germany and the Next War*, stating that war was a "biological necessity," that Nations must progress or decay, and that Germany must choose between world power and downfall. See *The Guns of August* at pp. 12-13. The Allies knew, or should have known, where the Germans were headed with the Von Schlieffen Plan and the acceptance of the Clausewitz precept that the heart of France was between Brussels and Paris. See *The Guns of August* at 21. In 1917 British intelligence intercepted and decoded a German Foreign Office proposal for a military alliance between Germany and Mexico that would give Mexico Arizona, New Mexico and Texas if the United States entered the war. See, Barbara Tuchman, *The Zimmerman Telegram*. Does the People's Liberation Army of the People's Republic of China agree with General von Bernhardi, or peace activists, like those that opposed Ronald Reagan's Strategic Defense Initiative? This question should be added to Mr. O'Riellys' questions.

ULTRA

On August 20, 1940, Winston Churchill stated that never was so much owed by so many to so few. See, e.g. *Battle of Britain* (1969). There may still be some disagreement about whether the Bletchley Park project was the single biggest contribution to the Allied Victory over Nazi Germany in the Second World War. See, e.g. Churchill, WinstonChurchill.org. But the Battle of the Atlantic was won by an Allied victory over the Nazi U Boats. See, e.g., Roy Conyers Nesbitt, *Ultra Versus U Boats: Enigma Decrypts in the National Archives* (2009). According to the United States Merchant Marines, U.S. merchant marines died at a rate of 1 in 24 or the highest rate of casualties of any U.S. service. See usmmm.org. One well-know WWII saying was "loose lips sink ships." The unprecedented peace and prosperity that the world has enjoyed since the end of the Second World War began not only with U.S. naval supremacy in the North Atlantic, but also in the Pacific. See, e.g., Jonathan Parshall and Anthony Tully, *Shattered Sword: The Untold Story of the Battle of Midway*.

47 U.S.C. 1006

In conjunction with 47 U.S.C. 1008, 47 U.S.C. 1006 provides that if any person believes that standards are deficient, that person may petition the FCC to establish capable standards that protect the privacy and security of communications not authorized to be intercepted in order to minimize the costs of such compliance on residential ratepayers and serve U.S. policy to

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encourage the provision of new technologies to the public, including, presumably, to promote the U.S. Information Age comparative advantage in telecommunications. By providing unilateral trade concessions to foreign, state-owned enterprises, the Notice proposes to take the United States in the wrong direction on public safety and defense. I respectfully request that the FCC consider this additional "full range of issues" in 47 U.S.C. 1001-1010 under my constitutional right to petition ratified by 47 U.S.C. 1006.

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May 28, 2017

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
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Restoring Internet Freedom
WC 17-108

COMMENTS OF WILLIAM J. KIRSCH
Part Five

The Restoring Internet Freedom (RIF) Notice of Proposed Rulemaking (NPRM) does not raise, address or analyze any international legal issues and the re-reclassification of broadband services. Some are raised below.

THE STATUTE OF THE INTERNATIONAL COURT OF JUSTICE (ICJ)

Article 38(1) of the Statute of the ICJ details the generally accepted sources of international law including: (a) international conventions; (b) international custom; (c) general principles of law; and (d) judicial decisions.

Under Article 93 of the Charter of the United Nations all U.N. member states are parties, *ipso facto*, to the ICJ.

LIST OF TREATIES AND OTHER AGREEMENTS IN FORCE

The United States Department of State (DOS) publishes, *Treaties in Force, A List of Treaties and Other Agreements of the United States in Force*, as of January 1, 2016. DOS states that a treaty, as a matter of U.S. constitutional law, denotes only those international agreements made by the President with the advice and consent of the Senate in accordance with Article III, Section 2 of the Constitution of the United States.

The RIF NPRM does not state that the re-reclassification is consistent with U.S. treaty or other commitments. The RIF NPRM does not mention or analyze the U.S. relationship, for example, with the International Telecommunication Union (ITU) or the World Trade Organization (WTO) or bilateral U.S. agreements on telecommunications or related matters.

ITU CONSTITUTION AND CONVENTION

The DOS *Treaties in Force* includes a reference to the Constitution and Convention of the International Telecommunication Union, with annexes, done at Geneva December 22, 1992, entered into force "definitively" for the United States October 26, 1997. The ITU Constitution and Convention are considered international treaties under U.S. law. DOS states that the 1992

Constitution and Convention replaced the international telecommunication convention adopted at Nairobi November 6, 1982 as between contracting parties, but for states that have signed but not ratified the DOS refers readers to Article 52 of the Constitution. DOS also notes that the 1992 Constitution and Convention were amended at Kyoto (October 14, 1994), at Minneapolis (November 6, 1998) and at Marrakesh (October 18, 2002).

WARC-79

The DOS *Treaties in Force* list the Radio Regulations, with appendices and final protocol done at Geneva December 6, 1979 and entered into force definitively for the United States October 27, 1983. The 1979 Radio Regulations abrogate and replace the Radio Regulations adopted at Geneva December 21, 1959, 12 UST 2377.

WATTC-88

The DOS *Treaties in Force* list the International Telecommunications Regulations [telegraph and telephone], with appendices and final protocol (WATTC-88), done at Melbourne December 9, 1988, and entered into force definitively for the United States July 1, 1990. DOS states that the 1988 regulations replaced the 1973 regulations, 28 UST 3293, but that the 1958 regulations, 10 UST 2423, remain in force as between the contracting parties and the Dominican Republic and that the Taiwan authorities have adhered to the 1958 regulations. The DOS *Treaties in Force* does not mention the 2012 Dubai ITRs.

FOURTH PROTOCOL TO THE GENERAL AGREEMENT ON TRADE IN SERVICES (GATS)

The DOS *Treaties in Force* lists an executive agreement, the Fourth Protocol to the GATS, signed at Geneva April 15, 1997 and entered into force Feb. 5, 1998 noting that the United States is not a party to the first three GATS protocols.

AGREEMENTS RELATING TO RECIPROCAL AMATEUR RADIO AUTHORIZATIONS

The DOS *Treaties in Force* includes bilateral reciprocal agreements to permit license amateur radio operators of either country to operate their stations in the other country listed by entry into force by year below:

1951 Canada
1964 Costa Rica
1965 Australia, Belgium, Bolivia, Brazil, Colombia, Dominican Republic, Ecuador, Luxembourg, Peru, Portugal, Sierra Leone, United Kingdom
1966 France, Germany, India, Israel, Kuwait, Netherlands, Nicaragua, Panama, Paraguay, Uruguay
1967 Argentina, Austria, Chile, El Salvador, Finland, Honduras, New Zealand, Norway

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OneWeb satellite service. See, e.g., Jon Russell, OneWeb raises \$1.2 Billion to offer satellite-based internet service as soon as 2019, TechCrunch, December 19, 2016.

Satellite communications represent as little as one percent of international telecommunications and the RIF NPRM offers an apparent visceral unwillingness to work with the Trump Administration to Make America Great Again. If the FCC RIF NPRM proposes to return to pre-New Deal antitrust and other regulation then the logical alternative is to return to President Wilson's post First World War "same footing as regards privileges" standard for the grant of the permit of the Western Union Telegraph Company service to Cuba incorporated into the Submarine Cable Landing License Act, 47 U.S.C. 34-39 inclusive, and Section 310 of the Communications Act of 1934.

The French remind us that *plus ça change, plus c'est la même chose*. While private companies often predominate in the provision of the best known submarine cable systems, governments have traditionally controlled as many or more submarine cable systems. In 1934, the same year that the Communications Act was adopted during Franklin Roosevelt's first hundred days, the British Imperial and International Communications company changed its name to Cable and Wireless. But in 1947 the British government nationalized Cable and Wireless and made it into an international communications arm of the British Post Office. Only in 1981 did the Thatcher government privatize C&W to introduce competition to British Telecom into the British telecommunications market. The RIF NPRM includes no information or analysis of this historic Thatcher government achievement nor why the FCC seeks to provide a unilateral trade concession to the Japanese and the British in the context of OneWeb in advance of much-anticipated and long overdue Trump Administration telecom trade agreements with the Japanese and British under the Trade Act of 2015 and the Africa Growth and Opportunity Act. We remember that cable service ended in the Mediterranean sea and parts of the Pacific ocean during the Second World War and that cable repair ships were considered a legitimate target by both sides. The RIF NPRM provides no national security analysis of the re-reclassification proposal.

TRADE ACT OF 2015 and AGOA

The FCC clearly lacks telecom trade expertise after two decades of unlawful departure from the SCLLA and Section 310. DOS meticulously negotiated more bilateral reciprocal amateur radio agreements over a half century with more countries than those that declined to sign the 2012 Dubai ITRs. The Internet arguably is less free today than amateur radio service was during the Cold War. The RIF NPRM does not provide us with this information or any analysis of the FCC proposal on declining internet freedom internationally.

DOS and the United States Postal Service have done a better job of negotiating agreements for rapid and efficient express mail service. DOS lists more bilateral agreements for express mail than the total number of signatories and non-signatories of the 2012 Dubai ITRs. For many countries around the world there is a clear link between postal and telecommunications services. The amazing success of Amazon and Netflix makes clear that this link is worthy of

analysis.

ICANN chose a former director of the Swedish postal and telecommunications administration as its new President and Chief Executive Officer for the administration of the U.S. and International Internet Telephone Book. The FCC has abdicated its legal responsibility for ICANN without explanation and now proposes to extend that abdication of legal responsibility to the provision of broadband common carrier services in the United States relying on the traditional doctrine of *Chevron deference*. But *Cable & Wireless v. FCC* was not raised in *Brand X*. The RIF NPRM lacks any discussion of *Cable & Wireless v. FCC* or of U.S. telecom agreements. See, e.g., *Agreement concerning North Atlantic Treaty Organization satellite communications earth terminal in the United States*, signed at Washington July 10, and at Mons, Belgium, August 20, 1970, entered into force August 20, 1970. 21 UST 2089.

The FCC lacks the statutory authority to abdicate its legal responsibility to provide for reciprocal access under the Trade Act of 2015 and AGOA and to not comply with U.S. treaty and other commitments to re-classify broadband common carrier services. The RIF NPRM does not address the relationship between the Open Internet and postal services, including express mail, to bring peace and prosperity by improved communications to the rest of the world. The RIF NPRM does not address the threat to global warming represented by the protectionist and mercantilist trade policies of our trading partners thereby artificially suppressing the use of telecommunications and information services as an effective substitute for transportation and direct face to face meetings that have a larger carbon footprint and thereby contribute to global warming. The failure of the FCC to fulfill its legal responsibility for Internet names, numbers and security protocols involves clear error, an abuse of discretion and arbitrary and capricious reasoning. The RIF NPRM is dead on arrival and should left alone to rest in peace.

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June 1, 2017

BEFORE THE
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Restoring Internet Freedom
WC 17-108

COMMENTS OF WILLIAM J. KIRSCH
Part Six

*You are lost, and gone forever, Dreadful sorry....
My Darling Clementine (1946)*

CHARTER OF THE UNITED NATIONS

While the RIF NPRM waxes nostalgic about the period before the adoption of the Communications Act of 1934, the post-World War II world, based on the Charter of the United Nations, was a U.S. attempt at a magnanimous peace after the failure of the League of Nations and the European-led punitive peace of the Treaty of Versailles celebrating the Sun King who prophesized apres moi le deluge.

The recent discussion on C-Span among historians expert on the Presidency of Woodrow Wilson noted that the three primary three achievements during his term in office were: (1) the progressive income tax; (2) the establishment of the Federal Trade Commission; and (3) women's suffrage. The end of the First World War brought about an historic alignment of political power in the United States.

Women flexed their muscles in support of prohibition and pacifism. Or put another way they told the men to stop the drinking and stop the fighting.

The United States Senate had read the U.S. Constitution and was not ready to cede U.S. sovereignty. The Presidential effort to obtain the consent of the Senate for the League of Nations failed. This was, perhaps in part, because Wilson unwisely did most of the negotiating of the treaty in person without the advice of the Senate. Better results might have been achieved by transatlantic telegraph messages from the Secretary of State in Paris to the President in Washington.

A German historian on the C-Span program, author of a recent Wilson book in German, noted that the Germans felt betrayed by Wilson. But American historians have noted in the past European opposition to Wilson including the British King asserting that he thought Wilson was an odious man and Clemenceau acidly noting that God only had Ten Commandments.

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DATE: Monday, June 26, 2017

Congress made the decision with regard to the League of Nations and the modern day "imperial Presidency" and the relative decline of the Article One Congress is generally traced to Franklin Roosevelt. Perhaps this is why in Geneva one finds the Swiss paying homage to Wilson in the environs of the former League of Nations facilities while the more prominent honor in Paris is reserved for FDR. Plus ça change, plus c'est la même chose? Now the Trump Administration appears to begin with a better relationship with Paris than it does with the U.N. specialized agencies in Geneva.

President Obama made the mistake of not obtaining the advice and consent of the Senate on the Paris Climate Change agreement. But President Wilson and the Congress were able, in the wake of the First World War, to agree on the "same footing as regards privileges" standard for the Submarine Cable Landing License Act. Therefore, the FCC opposition to a First World War SCLLA based on a glib assessment of a bayonets era defense posture is misplaced. The SCLLA was a reaction to the stupidity of the First World War not a cause.

WATTC-88

The DOS *Treaties in Force* list the International Telecommunications Regulations [telegraph and telephone], with appendices and final protocol (WATTC-88), done at Melbourne December 9, 1988, and entered into force definitively for the United States July 1, 1990, but does not mention the 2012 Dubai ITRs. But the international telecommunications standards that are being developed for the Internet of Things and for 5G, which will provide for broadband speeds for mobile broadband already applicable for wireline broadband, are being developed by ITU-T Study Groups under the 2012 illiberal majority rule Dubai ITRs not under the WATTC-88 rules. Absent a timely effort by the United States and other non-signatories to the Dubai ITRs to obtain revocations/denunciations of the Dubai ITRs the international telecommunications standards adopted under the voluntary, consensus-based, European-led WATTC-88 rules will soon be lost and gone forever. The RIF proposal does not mention this loss of global internet freedom. Nor does it mention that the Dubai ITRs were not only not signed by the United States, but do not include the traditional national ratification process by national legislatures. Like the Paris Climate Change agreement they represent a disturbing trend away from the time-tested U.S. constitutional approach supported by the Dutch government, the host government for the International Court of Justice.

FOURTH PROTOCOL TO THE GENERAL AGREEMENT ON TRADE IN SERVICES (GATS)

The DOS *Treaties in Force* lists an executive agreement, the Fourth Protocol to the GATS, signed at Geneva April 15, 1997 and entered into force Feb. 5, 1998 noting that the United States is not a party to the first three GATS protocols. According to the European Union position for the Transatlantic Trade and Investment Partnership and the Canadian exemption to the North American Free Trade Agreement, the GATS does not apply to broadband services. Therefore, the RIF proposal would be a unilateral trade concession to the European Union and

Canada for the first round of Trump Administration trade negotiations after the withdrawal of the United States from the Transpacific Partnership. The RIF unilateral trade concession is inconsistent with the Trade Act of 2015 and the Africa Growth and Opportunity Act and would doom any chance of a new Trade in Services Agreement at the World Trade Organization. The FCC RIF unilateral trade concession approach is telecom trade MFN free rider misconduct. A better approach would be to expand e-commerce with Africa that includes the integration of e-commerce and postal concessions by African countries with U.S. concessions on agricultural and other goods in which African countries have a comparative advantage as well as concessions on free movement of persons. Let African Union countries agree to let some of their best and brightest immigrate to the United States on an orderly basis. Perhaps then there will be no need for a wall. Europe can certainly not build a wall across the entire Mediterranean.

The RIF proposal does not include any analysis on these issues. Nor does the RIF proposal contain any analysis on the unlawful decision by ICANN to choose a non-NATO former director of the Swedish postal and telecommunications administration as its new President and Chief Executive Officer for the administration of the U.S. and International Internet Telephone Book, including for dotAfrica. The FCC has abdicated its legal responsibility for ICANN without explanation. The FCC now proposes to extend that abdication of legal responsibility to the provision of broadband common carrier services in Africa relying on the traditional doctrine of *Chevron deference*. But *Cable & Wireless v. FCC* was not raised in *Brand X*. The RIF NPRM lacks any discussion of *Cable & Wireless v. FCC*. The RIF NPRM lacks any discussion of U.S. telecom agreements, including the *Agreement concerning North Atlantic Treaty Organization satellite communications earth terminal in the United States*, signed at Washington July 10, and at Mons, Belgium, August 20, 1970, entered into force August 20, 1970. 21 UST 2089. The RIF NPRM lacks any discussion of the dotAfrica issue. ICANN was not raised in *U.S. Telecom v. FCC* or *Brand X*. The FCC may only legally address these issues by placing my Petition for Reconsideration of the Open Internet Order on public notice now. To do otherwise is to deny my right to due process. The Chairman of ICANN stated during the IANA transition process that *High Noon* (1952) would be followed by the morning after. We hoped that NTIA was listening. Did NTIA know that the Academy Award for Best Original Song winner in 1952 was Tex Ritter's classic *Forsake Me Not My Darling*? We hope that ITAC will recognize that no one in town appears to be willing to help President Trump just like no one was willing to help Academy Award Best Actor Gary Cooper. Perhaps Mr. Redl, present at the State of the Net Conference, will step in to help President Trump and fulfill his campaign commitment to restore U.S. oversight of ICANN before the Open Internet is lost and gone forever.

5G

Samuel Morse said that a "telegraphic communication ...may with certainty be established across the Atlantic Ocean." See Bill Burns, *Submarine Cable System History: 150 Year History of Submarine Cables*, Submarine Cable Systems. com (2012). We know that 5G, the latest in the traditional decade long development of mobile standards, is coming to a neighborhood near you soon. One estimate is that cartels, on average, have raised prices twenty five percent over the

past two hundred years or the approximate period that the stock exchange has been on Wall Street. Therefore, we understand the FCC and the Wall Street interest in creating a 5G oligopoly to propel forward the next generation of broadband deployment. But the Trump Administration instincts towards favoring a bilateral approach for international agreements are correct. Submarine cables, amateur radio and express mail essentially began with the special Anglo-American relationship. The United States does not need to wait for a Brexit to establish a bilateral telecom trade agreement with the United Kingdom because telecom remains within the purview of the individual European member states as recognized both by our bilateral amateur radio agreements and by European member state self-representation at the ITU. A bilateral "same footing" standards agreement with the U.K. pre-Brexit will permit 5G to develop, including with Vodafone's global operations, on a world wide basis while also permitting OneWeb to provide service in the United States. Chairman Pai should not pursue a unilateral rush to judgment that denies the Trump Administration the opportunity to Make America Great Again as part of our special relationship with the United Kingdom and the British Commonwealth.

The question at the ITU is what standards should be adopted for 5G. There should be multiple choices that are voluntary and not mandatory dictating, for example, U.S. use of a PRC standard. The transatlantic telegraph cables were established under standards developed by the individual companies involved. True, the Germans developed the international telex standard in the 1920's that was used for half a century until the FCC deregulation of international telex accounting rates helped establish the Internet. The Japanese established the international fax standard in the later quarter of the 20th Century still used in Japan and perhaps in your office. The 2012 Dubai ITRs effectively set the stage for the domination of 5G by the BRICS/OPEC under the majority rule approach that supplanted the voluntary standards approach of the CCITT/CCIR/ITU for more than a century. The 2012 Dubai ITRs were a blunder of a historical dimension. DOS and USTR must get to work on their repeal and the FCC RIF should not go forward and undermine that effort.

If the FCC RIF proponents are so fond of a pre-1934 Act and pre-FTC Act approach perhaps for 5G in a Further NPRM the RIF proponents should be the ones making the case for the traditional approach that applied for railroad development. Generations have loved the monorail at Disneyland, but it does not seem to have been widely used in long distance transportation in any major country. The primary examples of competing railroad standards appear to be with regard to the Russian Trans-Siberian railroad connections and the French-Spanish railroad crossing. The traditional Spanish standard apparently performs well in the mountains, but the swaying made for a slower and more entertaining ride on flat ground. The Spanish standard might have saved the Spanish from Hitler. The Spanish standard denied entry to the trains that would have supplied the Nazi war machine. The Spanish remembered their Napoleonic War history. But the French were able to use their traditional elite technocratic skill to build a world class TGV after the war. The Administrative Procedure Act requires the FCC to comment on, and refute this analysis, in a Further RIF NPRM should the FCC persist in pursuing the RIF folly.

Fax

TO: Marlene Dortch

FROM: William J. Kirsch

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FAX: 8664180232

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SUBJECT: RIF Part 7 Pages 3-5

DATE: Tuesday, June 27, 2017

members listed telecom in their schedules. 26 of these were for basic, with some 50 including some or all "value-added services." And a deeper look reveals that many, like the PRC, did not provide any real market access for basic or enhanced services. Even Google and Facebook have been excluded from the PRC. Now two top ten valued companies, Tencent and Alibaba, are leveraging the protectionist, mercantilist, PRC Great Firewall to penetrate deeply into Silicon Valley to the future detriment of our next generation of small and medium-sized technology leaders. Tencent appears poised to extend that mercantilism into Hollywood based on the PRC's free trade free riding associated with screen quotas and the emergence of online games as a large current and future market. The RIF NPRM does not mention much less analyze the impact.

Article XIX paragraph 1 of the General Agreement on Trade in Services (GATS) established a commitment to achieve a progressively higher level of liberalization. But we have seen a retrenchment in the PRC, the BRICS and OPEC and with the 2012 Dubai ITRs rather than liberalization.

FOREIGN PARTICIPATION ORDER

In the *Foreign Participation Order*, 12 FCC Record 23891 (1997) the FCC adopted a "rebuttable presumption" that foreign investment from WTO Member States generally raised no competitive concerns. The PRC and others have rebutted this presumption.

According to the 2016 Broadband Progress Report 39% of rural America does not have access to broadband.

The coin has not yet dropped for the FCC, however, that foreign investment has deterred rather than promoted investment in rural broadband. The forgotten will be very unhappy if the RIF NPRM demonstrates that they have been fooled.

The FCC approved the \$130 billion Verizon buyout of Vodafone. That \$130 billion could have closed the rural digital divide. Instead, U.S. ratepayers appear to be more likely to have supported Brexit than rural broadband.

The FCC approved the SoftBank acquisition of Sprint. But the antique 1985 NTT law does not provide the "same footing as regards privileges" in the Japanese market for U.S. common carriers. SoftBank laying off workers and warehousing up to one sixth of available U.S. next generation spectrum is not consistent with the Trade Act of 2015. The RIF proposal would be an additional unilateral trade concession to the Japanese. The FCC should not encourage indirect Saudi investment in SoftBank to promote rural broadband. It would be better to encourage direct lawful Saudi investment in the United States and to work with the Dept. of Agriculture to support rural telecom co-operatives.

President Trump was correct to withdraw from the Transpacific Partnership. The TPP did not correct Japanese free riding on broadband telecom trade. The FCC must now correct the

Foreign Participation Order.

East is East and West is West, and never the twain shall meet.
Rudyard Kipling, *The Ballad of East and West* (1889)

BRAZIL

Brazil played a leading role in the unlawful proposal for the ICANN IANA transition away from U.S. oversight. Brazil is a traditional free rider on trade and on Western security. Is Brazil a part of the West? We wonder.

During the second term of the Brazilian Director-General of the WTO the FCC should assist USTR in filing telecom trade complaints that reverse the decline in internet freedom in WTO Member States. The RIF proposal undermines the Open Internet globally.

RUSSIA

In 1917 on the eve of the Russian Revolution, the Russian Empire had been surpassed in size only by the Mongol and British Empires. Ivan (1462-1505) had tripled Russian territory. Peter the Great sought to make Russia a maritime power. But even Ivan's and Peter's Russia was not large enough for Catherine the Great (1762-96). Catherine the Great, reigning over Russia's *Golden Age*, concluded that Russia could only defend itself by expanding its borders. And so we see in Tolstoi's masterpiece, *War and Peace* that when forced to choose between saving the Army and saving Moscow, Kutuzov chose the Army. Catherine the Great had preserved the land of serfs and military conscription. In 1812 Alexander preserved European liberty. In 1815 the Tsar brought the bistro to Paris.

We sometimes fail to recognize that another Alexander emancipated twenty three million serfs without a civil war. Like Abraham Lincoln, however, he was assassinated. The 125 million Russians in the 1897 census, including the liberated serfs, were second in number only to the Qing and the British Empires. Nicholas supported two Hague Peace Conference (1899 and 1907) seeking disarmament and peace, but could not have known that the Soviet Union would have a Cold War with his relatives in the West for almost half a century. Stalin's forced collectivization purged rural Russia of some 5 million kulaks. But the twenty million killed in the Second World War would permit Roosevelt, Churchill and De Gaulle to preserve liberty in the West while Stalin imposed a punitive peace in the East. Now the proposed RIF reclassification would provide Russia with a unilateral trade concession to pursue MFN rights in a WTO complaint against the United States. Surely, the FCC cannot be serious.

INDIA

A leading proponent and author of the Universal Declaration of Human Rights was from Gujarat. Prime Minister Modi is from Gujarat. Gujarat is derived from the Sanskrit word for

"sea worshippers". Gujarat is the Jewel of the West. Gujarat has a long and venerable tradition of trade including with the Egyptian Mamluks and the Ottoman Empire. East and West have long met in India. We are proud of having a first generation Indian-American as Chairman of the FCC. The Indian interest in free movement of persons provides an opportunity for the opening of the Indian broadband market. The RIF proposal would undermine such a Trump Trade Dream Team effort.

CHINA

Two PRC companies provide broadband to 81% of the PRC market. See, e.g., Michael Kan, *China to open up Internet broadband market with upcoming trends*, PC World, Nov. 27, 2014; Michele A. Wien and Stephen J. Ezell, *The 10 Worst Innovation Mercantilist Policies of 2013*, ITIF (Jan. 2014). With the establishment of the Great Firewall this is unlikely to change. The FCC RIF is an unwise unilateral trade concession to the PRC. Even the Trade Act of 2015 reciprocal treatment of the PRC is unlikely to provide any short term improvement in U.S. access to the PRC.

That does not mean we are unsympathetic to the desire of the great Chinese people for access to the Open Internet. We believe that their time will come. And we hope that they will forgive us for the wait. We recognize that they will already have to forgive us for the loss of Chinese liberty in the wake of great Chinese sacrifice during the Second World War. More than four fifths of the U.S. war effort was devoted to the war in Europe to defeat Hitler. The Chinese people suffered too great burden of defeating the Japanese imperial military both before and after a date that will live in infamy.

Studying the writings of Confucius and Jesus, we strongly disagree with Rudyard Kipling. Confucius and Jesus agree on the critical importance of forgiveness. Confucius wrote that the more a man knows the more he forgives. Jesus taught us the Lord's Prayer.

SOUTH AFRICA

Nelson Mandela took these lessons to heart. President Obama said that it took a man like Madiba to teach that reconciliation is not a matter of ignoring a cruel past, but a means of confronting it with inclusion and generosity and truth.

Americans of good will support reconciliation between the United States and Africa. The RIF proposal would not close the digital divide in Africa any more than it would in the United States. Less than half of the global population has internet access. This may be only a third in developing countries. The RIF proposal would undermine U.S. telecom investment in Africa. Title II is a better approach under the Africa Growth and Opportunity Act. But much work must be done to realize the one trillion dollars required for investment in African electricity and the half trillion in African broadband.

Fax

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SUBJECT: RIF Part 6 Page 5 Part 7 Pages 1-2

DATE: Tuesday, June 27, 2017

In the meantime, we appreciate the prompt FCC response in revealing a reflexive crony capitalist CATPA petition regulatory capture to affirm rather than address the FCC failure to provide for an adequate network. See 82 Federal Register 24560 (June 1, 2017).

/s/

William J. Kirsch
1211 S. Eads St. #211
Arlington, VA 22202
June 3, 2017

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

Restoring Internet Freedom
WC 17-108

COMMENTS OF WILLIAM J. KIRSCH
Part Seven

If I can make it there, I'll make it anywhere.....
Frank Sinatra, *Trilogy: Past, Present, Future* (1980)

Thomas More said everywhere I do perceive a certain conspiracy of the rich men seeking their own advantage.

Cartel profits have supported Wall Street and American capitalism for more that two centuries. John Jacob Astor's family, John D. Rockefeller Jr., and many others made a fortune on Manhattan real estate. So did a rich kid from Queens.

John Q. Public elected Donald Trump President not because he is a paragon of virtue. They elected "Caesar" not "Caesar's wife." Middle America rejected the elite urban notion of an America in decline and the inevitability of a 21st Chinese century.

The forgotten people of rural America elected Trump President because they agree with Frank Sinatra that if you can make it in New York, you can make it anywhere.

Now the slow start to the Trump Administration may be testing their belief and their patience. The President is taking his own sweet time going up the learning curve. Maybe that is why the sugar deal with Mexico came up first.

President Trump is slowly learning that leading the United States is different than running a business. For we are a nation of laws not of men. Civil servants have a loyalty to the United States of America. They have a duty to preserve, protect and defend the Constitution of the United States. They do not accept that the system is rigged. Because that would make America a tyranny rather than a democracy.

While the President may need and expect loyalty from his closest aides, to be successful he also needs assistance from those with the expertise to Make America Great Again. They need and deserve his loyalty.

Where have you gone,A nation turns its lonely eyes to you.
Simon and Garfunkel, *Mrs. Robinson* (1967)

A generation felt betrayed by President Johnson's prosecution of the Vietnam War. Now the question is whether President Trump will be loyal to the forgotten and fulfill his campaign promises. Otherwise the forgotten will turn their lonely eyes to someone else in four years.

President Trump, with his tentative decision to not withdraw from NAFTA, appears to have learned that the Uruguay Round agreements, not NAFTA, were the worst trade deal in history. We don't consider it a broken promise. At least not yet.

The four trillion dollar Information Technology Agreement (ITA) did make Apple the world's most valuable corporation. But absent a reduction in repatriated corporate income or an Apple decision to pay tax like individuals do on their worldwide income, John Q. Public has not seen the full ITA benefit to the United States. To the contrary, the ITA has been a double-edged sword as it assisted the People's Republic of China (PRC) in obtaining what the Director of the National Security Agency called the greatest transfer of wealth in history. In a generation, the PRC largely closed the technology gap with the West that had been in place since the publication of the Gutenberg Bible. This is an historic development in record time. The Obama Administration promised a Transpacific Partnership that would avoid the PRC writing the trade rules and then let the PRC write the rules for the one trillion dollar ITA II.

Apple and the other four largest global corporations (Amazon, Facebook, Google and Microsoft) also reaped great benefits from the Uruguay Round General Agreement on Trade in Services (GATS). Two rely on payments and two rely on advertising. But all five became wealthy from the global transition from analog to digital telecommunications that resulted from longstanding FCC regulatory efforts from *Hush-A-Phone*, 238 F.2d 266 (D.C. Cir. 1956), to *Carterfone*, 13 FCC 2d 420 (1968) to *Third Computer Inquiry*, 104 FCC 2d 958 (1986) to *Regulation of International Accounting Rates*, 3 FCC Record 1614 (1988), 6 FCC Record 3552 (1991).

One admission against interest is that the *Restoring Internet Freedom* proposal to reclassify the broadband services of the legacy telephone and cable television providers does have a *rough justice* aspect. The Big Five were the primary beneficiaries of the ITA and the GATS. Silicon Valley has prospered from the World Trade Organization (WTO) deal. The legacy companies, however, have had to deal with foreign competitive entry despite the dismal failure of the GATS to open foreign markets to U.S. common carriers.

The Clinton Administration used false statistics to make phony promises that did not result in multilateral market liberalization across the WTO for basic telecommunications services. Sure the Clinton Administration can claim that ninety "distinct" territorial entities made commitments in basic or enhanced telecommunications services. But only sixty-nine WTO

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1968 Barbados, Guyana, Indonesia, Ireland, Monaco
1969 Bahrain, Belize, Dominica, Fiji, Kiribati, Saint Vincent and the Grenadines, Seychelles, Solomon Islands, Sweden, Tuvalu
1971 Jamaica
1973 Denmark
1976 Philippines
1977 Ghana, Liberia
1978 Greece, Iceland, Suriname
1979 Botswana, Grenada, Haiti, Jordan, Spain
1980 Yugoslavia
1981 Italy
1985 Japan, South Africa
1987 Cyprus,
1990 Guatemala, Papua New Guinea, Thailand
1991 Marshall Islands
1993 Bosnia-Herzegovina
1996 Turkey

AGREEMENTS RELATING TO EXPRESS MAIL

The DOS *Treaties in Force* includes agreements related to express mail listed by year of entry into force below:

1975 Belgium
1978 Taiwan
1979 Canada, China (Hong Kong), Germany, Singapore, Switzerland, United Kingdom,
1980 Argentina, Korea
1981 Australia, France, Kuwait, South Africa
1982 Bahrain, Israel
1983 China (Macao), Colombia, Egypt, Sweden, Luxembourg, Malaysia, Qatar, Spain
1984 Barbados, Denmark, Ireland, Italy, New Zealand, Norway, Saudi Arabia, Venezuela
1985 Bahamas, Cyprus, Finland, Greece, Iceland, Panama, Portugal, Turkey, United Arab Emirates
1986 Austria, Cayman Islands, Chile, Guyana, Nigeria, Oman, Senegal
1987 Bangladesh, Burkina Faso, Chad, Cote d'Ivoire, Djibouti, Hungary, India, Indonesia, Jordan, Mali, Mexico, Niger, Pakistan
1988 Benin, Botswana, Brazil, Central African Republic, Guinea, Madagascar, Malawi, Morocco, Papua New Guinea, Paraguay, Rwanda, Somalia, Sierra Leone, Swaziland, Uganda, Zambia, Zimbabwe
1989 Costa Rica, El Salvador, Ethiopia, Gabon, Iraq, Liberia, Netherlands, Saint Lucia, Vanuatu
1990 Burundi, Cameroon, Democratic Republic of the Congo, Ecuador, Ghana, Honduras, Kenya, Lesotho, Maldives, Mozambique, Poland, Romania, Sri Lanka

1991 Brunei, Bulgaria, Dominican Republic, Jamaica, Laos, Malta, Nicaragua, Peru, Solomon Islands, Sudan
1992 Belize, Cabo Verde, Croatia, Estonia, Latvia, Lithuania, Mauritius, Philippines, Saint Vincent and the Grenadines, Seychelles, Yemen
1993 Belarus, Bhutan, Czech Republic, Mauritania, Samoa, Saint Kitts and Nevis, Slovenia
1994 Angola, Eritrea, Slovak Republic, Namibia, Nauru, Ukraine, Vietnam
1995 Cambodia, Grenada
1996 Albania, French Polynesia, Georgia, Mongolia, Nepal
1997 Haiti
1998 Bolivia
2000 Dominica
2001 Bosnia-Herzegovina
2002 Fiji

MARY MEEKER, KLEINER PERKINS

Ms. Meeker informs us that U.S adults now spend over five hours a day on the Internet and three hours a day on mobile, up from one hour in 2011. See, e.g., Josh Constine, The Best 2017 Internet Trends Slides and What They Mean, TechCrunch.com, May 31, 2017.

In contrast, during the "heyday" of Title II regulation of AT&T, as the monopoly provider of telephone service, average usage of the telephone network was less than one hour a day or as little as a half-hour. The RIF NPRM does not provide any analysis of the substantial increase in Internet usage under Title II regulation of broadband common carriers.

The Meeker analysis notes that the People's Republic of China has 700 million mobile users and that growth is twelve percent a year versus a global average of three percent. India has 355 million internet users, second only to the PRC, but notes that smartphones are still highly priced at an average eight percent of annual per capita GDP. The RIF NPRM does not provide any analysis of the regulation of mobile broadband in the PRC or India and the relationship to the re-classification.

The Meeker analysis includes listing of the top five companies by market valuation: (1) Apple at \$800 million; (2) Google at \$680 million; (3) Microsoft at \$540 million; (4) Amazon at \$476 million; and (5) Facebook at \$441 million. The RIF NPRM does not reference, explain or address the inter-relationship between the five U.S. Internet giants worth some \$3 trillion and U.S. legacy telephone and cable television providers nor does it mention the ninth and tenth companies on the list, TenCent and Alibaba.

The Meeker analysis mentions that e-commerce online retailing caused package and parcel shipping volumes to increase nine percent. The RIF NPRM provides no analysis of the inter-relationship between e-commerce and postal issues or the bilateral U.S. express mail agreements and the 2012 ITRs.

The Meeker analysis informs us that humans created 14 zettabytes of data in 2016 or 14 trillion gigabytes. The RIF NPRM provides no analysis of this astounding increase under Title II regulation in the United States and more onerous and protectionist regulation in the rest of the world or whether a one-time, one dollar, tax per gigabyte to reimburse the United States for inventing the Internet would almost eliminate the U.S budget deficit.

The Meeker analysis notes that mobile ad dollars now exceed desktop ad dollars and that advertising spending is expected to exceed television advertising in six months. The Meeker analysis also notes that in developing markets, where data costs are high, some 400 million users block mobile ads. The RIF NPRM does not reference, address or analyze the impact of these changes in advertising on the re-reclassification proposal including whether data services provided by Google and Facebook, which account for as much as eighty five percent of ad growth, qualify as common carrier services for a fee under Title II and whether such providers should be contributing to the bloated FCC subsidy schemes of up to seventeen percent that make service rates to the middle class and the poor unjust and unreasonable under Title II. The RIF does not address the re-reclassification and India's denial of Facebook's proposal.

The RIF NPRM also does not address the viability of any FCC subsidy schemes upon re-reclassification including with regard to the so-called "homework gap" particularly in light of the Meeker analysis that games earn \$100 billion a year versus \$2.6 billion in 1995.

SUBMARINE CABLE LANDING LICENSE ACT

The Department of State reminds us of the *Convention for protection of submarine cables*, signed at Paris March 14, 1884 and entered into force May 1, 1888.

All interested parties should review Bill Burns, *Submarine Cable System History: 150-Year History of Submarine Cables*, SubmarineCableSystems.com (2012). During the nineteenth century there were ten North Atlantic cables that were owned by five corporations: (1) Anglo-American Telegraph Company (a successor to Cyrus Field's Atlantic Telegraph Company); (2) Compagnie Francaise du Telegraphe de Paris a New York; (3) Commercial Cable Company; (4) Direct United States Cable Company; and (5) Western Union Telegraph Company. See *Manufacturer and Builder*, Volume 24, Issue 5, Western and Company (May 1892).

The last major submarine telegraph cable was laid in 1952. The first transatlantic telephone cable, TAT-1 began operation in 1956 to the United Kingdom with thirty six telephone channels and calls costing three dollars a minute followed by TAT-2 beginning operation to France and Germany in 1959. The RIF NPRM does not discuss the importance of TAT-8, the first fiber optic across the North Atlantic with forty thousand telephone channels or even mention TAT-9, TAT-10, TAT-11, TAT-12/13 or PTAT-1. All began operation before the unlawful Clinton Administration decision with regard to ICANN. The RIF NPRM does not seek comment on the Facebook/Microsoft/Telefonica MAREA cable to Spain or the proposed SoftBank